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July 16, 2008

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE

10
11 CHRISTINE GILMOUR, }
12 Plaintiff, }
13 vs. }
14 AETNA LIFE INSURANCE }
15 COMPANY; CIRCUIT CITY }
16 STORES, INC. LONG TERM }
17 DISABILITY PLAN, }
Defendants.
}
Case No. C 08-02803 RS
FIRST AMENDED COMPLAINT
FOR:
BREACH OF THE EMPLOYEE
RETIREMENT INCOME
SECURITY ACT OF 1974;
ENFORCEMENT AND
CLARIFICATION OF RIGHTS;
PREJUDGMENT AND
POSTJUDGMENT INTEREST;
AND ATTORNEYS' FEES AND
COSTS

Plaintiff Christine Gilmour herein sets forth the allegations of her first amended complaint against Defendants Aetna Life Insurance Company and Circuit City Stores, Inc. Long Term Disability Plan.

PRELIMINARY ALLEGATIONS

25 1. Jurisdiction: This action is brought under 29 U.S.C. §§ 1132(a), (e), (f)
26 and (g) of the Employee Retirement Income Security Act of 1974 (hereinafter
27 "ERISA") as it involves a claim by Plaintiff for employee benefits under an employee
28 benefit plan regulated and governed under ERISA. Jurisdiction is predicated under

Case 5:08-cv-02803-RS Document 7 Filed 06/26/2008 Page 2 of 6

1 these code sections as well as 28 U.S.C. § 1331 as this action involves a federal
2 question. This action is brought for the purpose of recovering benefits under the
3 terms of an employee benefit plan, enforcing Plaintiff's rights under the terms of an
4 employee benefit plan, and to clarify Plaintiff's rights to future benefits under the
5 employee benefit plan named as Defendant. Plaintiff seeks relief, including but not
6 limited to: payment of benefits, prejudgment and postjudgment interest, and
7 attorneys' fees and costs.

8 2. Plaintiff was at all times relevant an employee of Circuit City Stores, Inc.
9 and a resident of the County of Monterey, State of California.

10 3. Plaintiff is informed and believes that Defendant Aetna Life Insurance
11 Company ("Aetna") is a corporation with its principal place of business in the State of
12 Connecticut, authorized to transact and transacting business in the Northern District
13 of California and can be found in the Northern District of California. Aetna is the
14 insurer of benefits under the Circuit City Stores, Inc. Long Term Disability Plan,
15 (hereinafter "LTD Plan") and acted in the capacity of a plan administrator.

16 4. Plaintiff is informed and believes that Defendant LTD Plan is an
17 employee welfare benefit plan regulated by ERISA, established by Circuit City
18 Stores, Inc., under which Plaintiff is and was a participant, and pursuant to which
19 Plaintiff is entitled to Long Term Disability ("LTD") benefits. Pursuant to the terms
20 and conditions of the LTD Plan, Plaintiff is entitled to LTD benefits for the duration
21 of Plaintiff's disability, for so long as Plaintiff remains disabled as required under the
22 terms of the LTD Plan. The LTD Plan is doing business in this judicial district, in
23 that it covers employees residing in this judicial district.

24 5. Defendants can be found in this judicial district and the Defendant Plan
25 is administered in this judicial district. The LTD claim at issue herein was also
26 specifically administered in this judicial district. Thus, venue is proper in this judicial
27 district pursuant to 29 U.S.C. § 1132(e)(2).

28

1 **FIRST CLAIM FOR RELIEF AGAINST ALL DEFENDANTS**
2 **FOR PLAN BENEFITS, ENFORCEMENT AND CLARIFICATION OF**
3 **RIGHTS, PREJUDGMENT AND POSTJUDGMENT INTEREST, AND**
4 **ATTORNEYS' FEES AND COSTS**

5 **(29 U.S.C. § 1132(a)(1)(B))**

6 6. Plaintiff incorporates by reference all preceding paragraphs as though
7 fully set forth herein.

8 7. At all times relevant, Plaintiff was employed by Circuit City Stores, Inc.
9 and was a covered participant under the terms and conditions of the LTD Plan.

10 8. During the course of Plaintiff's employment, Plaintiff became entitled to
11 benefits under the terms and conditions of the LTD Plan. Specifically, while Plaintiff
12 was covered under the LTD Plan, Plaintiff suffered a disability rendering Plaintiff
13 disabled as defined under the terms of the LTD Plan.

14 9. Pursuant to the terms of the LTD Plan, Plaintiff made a claim to Aetna
15 for LTD benefits under the LTD Plan. On July 19, 2007, Plaintiff's claim for LTD
16 benefits was denied by Aetna on the ground that she did not meet the LTD Plan
17 definition of disability. Plaintiff appealed this determination. Despite overwhelming
18 evidence of a covered LTD claim, on December 21, 2007, Aetna erroneously and
19 wrongfully continued to uphold its prior determination denying Plaintiff's claim for
20 LTD benefits.

21 10. Defendants Aetna and the LTD Plan breached the Plan and violated
22 ERISA in the following respects:

23 (a) Failure to pay LTD benefit payments to Plaintiff at a time when
24 Aetna and the LTD Plan knew, or should have known, that
25 Plaintiff was entitled to those benefits under the terms of the LTD
26 Plan, as Plaintiff was disabled and unable to work and therefore
27 entitled to benefits. Even though the LTD Plan and Aetna had
28 such knowledge, Aetna denied Plaintiff's LTD benefits;

- (b) Failure to provide a prompt and reasonable explanation of the basis relied on under the terms of the LTD Plan documents, in relation to the applicable facts and LTD Plan provisions, for the denial of Plaintiff's claims for LTD benefits;
- (c) After Plaintiff's claim was denied in whole or in part, Aetna failed to adequately describe to Plaintiff any additional material or information necessary for Plaintiff to perfect her claim along with an explanation of why such material is or was necessary;
- (d) Concealing and withholding from Plaintiff the notice requirements Aetna and the LTD Plan were required to provide Plaintiff pursuant to ERISA and the regulations promulgated thereunder, particularly Code of Federal Regulations § 2560.503-1(f)-(g), inclusive; and
- (e) Failing to properly and adequately investigate the merits of Plaintiff's disability claim and failing to provide a full and fair review of Plaintiff's claim.

17 11. Plaintiff is informed and believes and thereon alleges that Defendants
18 wrongfully denied her disability benefits under the LTD Plan by other acts or
19 omissions of which Plaintiff is presently unaware, but which may be discovered in
20 this future litigation and which Plaintiff will immediately make Defendants aware of
21 once said acts or omissions are discovered by Plaintiff.

22 12. Following the denial of benefits under the LTD Plan, Plaintiff exhausted
23 all administrative remedies required under ERISA, and Plaintiff has performed all
24 duties and obligations on Plaintiff's part to be performed under the LTD Plan.

25 13. As a proximate result of the aforementioned wrongful conduct of the
26 LTD Plan and Aetna, and each of them, Plaintiff has damages for loss of disability
27 benefits in a total sum to be shown at the time of trial.

1 14. As a further direct and proximate result of this improper determination
2 regarding Plaintiff's LTD claim, Plaintiff in pursuing this action has been required to
3 incur attorneys' costs and fees. Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff is
4 entitled to have such fees and costs paid by Defendants.

5 15. The wrongful conduct of the LTD Plan and Aetna has created
6 uncertainty where none should exist, therefore, Plaintiff is entitled to enforce her
7 rights under the terms of the LTD Plan and to clarify her right to future benefits under
8 the terms of the LTD Plan.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

12 1. Payment of disability benefits due Plaintiff;
13 2. Pursuant to 29 U.S.C. § 1132(g), payment of all costs and attorneys' fees
14 incurred in pursuing this action;
15 3. Payment of prejudgment and postjudgment interest as allowed for under
16 ERISA; and
17 4. Such other and further relief as this Court deems just and proper.

19 | DATED: June 26, 2008

KANTOR & KANTOR, LLP

By: /s/ Peter S. Sessions

Peter S. Sessions
Attorneys for Plaintiff
Christine Gilmour

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 19839 Nordhoff Street, Northridge, California 91324.

6 On June 26, 2008, I served the foregoing document described as: FIRST
7 AMENDED COMPLAINT FOR: BREACH OF THE EMPLOYEE RETIREMENT
8 INCOME SECURITY ACT OF 1974; ENFORCEMENT AND CLARIFICATION OF
RIGHTS; PREJUDGMENT AND POSTJUDGMENT INTEREST; AND ATTORNEYS'
FEES AND COSTS in this action by serving a true copy thereof addressed as follows:

10 Ronald Alberts
Gordon & Rees, LLP
633 W. Fifth Street, Suite 4900
11 Los Angeles, CA 90071
12 E-Mail: ralberts@gordonrees.com
Tel#: 213-576-5000
Fax#: 213-680-4470

14 [X] (BY MAIL) I deposited such envelope in the mail at Northridge, California. The
15 envelope was mailed with postage thereon fully prepaid.

16 [X] As follows: I am "readily familiar" with the firm's practice of collection and
17 processing correspondence for mailing. Under that practice it would be deposited
18 with U.S. postal service on that same day with postage thereon fully prepaid at
19 Northridge, California in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date
or postage meter date is more than one day after date of deposit for mailing in
affidavit.

20 [] (BY PERSONAL SERVICE) I caused such envelope to be delivered by Now
Messenger to the offices of the addressee.

21 [] (BY FACSIMILE) I faxed such document to the facsimile number above
22 following regular business practices.

23 [] (BY E-MAIL SERVICE) I also caused the above-referenced document to be e-
mailed to the above named person.

24 [X] (FEDERAL) I declare that I am employed in the office of a member of the bar of
this court at whose direction the service was made.

Executed on June 26, 2008, Northridge, California.

Tirée Parell

Tinee Parell

Complaints and Other Initiating Documents

5:08-cv-02803-RS Christine Gilmour-v-Aetna Life Insurance Company
ADRMOP, E-Filing

U.S. District Court
Northern District of California
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The following transaction was received from by Sessions, Peter entered on 6/26/2008 1:40 PM and filed on 6/26/2008

Case Name: Christine Gilmour-v-Aetna Life Insurance Company

Case Number: 5:08-cv-2803

Filer: Christine Gilmour

Document Number: 7

Docket Text:

AMENDED COMPLAINT *First Amended Complaint against all defendants. Filed by Christine Gilmour. (Sessions, Peter) (Filed on 6/26/2008)*

5:08-cv-2803 Notice has been electronically mailed to:

Alan Edward Kassan akassan@kantorlaw.net

Peter Steffens Sessions psessions@kantorlaw.net

5:08-cv-2803 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:I:\CASES\02 LITIGATION\Gilmour v. Aetna - PSS\Gilmour - First Amended Complaint.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=6/26/2008] [FileNumber=4492074-0]

[3bd121484f56a4c0aad5ae0399baf390f41894fe5c69157c1da1f183bd8b4b61607cd

2a9e50648c7721929e2c5b4c78417e4a137267a36925570caf1be576a6c]]